

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

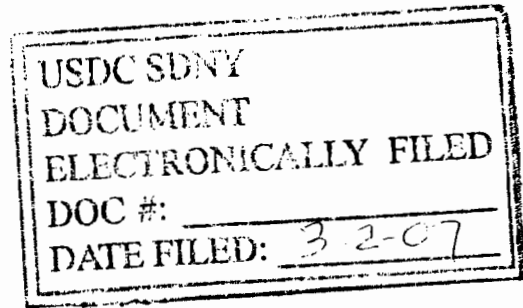
-----X
JOAN LEGENO,

Plaintiff,

-v-

THE CORCORAN GROUP,

Defendant.
-----X



06 Civ. 2897 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On October 16, 2006, the Honorable Kevin Nathaniel Fox, United States Magistrate Judge, issued a detailed Report and Recommendation in the above-captioned matter recommending that the defendant's motion under Fed. R. Civ. P. 12(b)(6) to dismiss plaintiff's complaint be granted. Plaintiff timely filed objections on October 25, 2006, to which defendant timely responded on November 1, 2006.

Having reviewed the record and the issues de novo, and having considered plaintiff's objections, the Court hereby adopts the Report and Recommendation, but with the following clarification: on page 7 of the Report and Recommendation, Judge Fox states that "the document also indicates that a real estate salesperson does not receive any remuneration, regardless of the number of hours worked, other than a commission made on a sale." In fact, it appears that whether plaintiff would have been entitled to a set salary on top of any commissions is a contested fact. See plaintiff's letter dated 10/20/06 at 1. However,

taking this fact in the light most favorable to the plaintiff and assuming that a real estate salesperson would enjoy a set salary, the position should still be characterized as an independent contractor not entitled to the protections of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, for the other reasons set forth in Judge Fox's Report and Recommendation. Accordingly, defendant's motion to dismiss plaintiff's complaint in its entirety is hereby granted. The Clerk is directed enter final judgment.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'JED S. RAKOFF', is written over a horizontal line.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
February 28, 2007